In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No.: 77-558

GEORGE GREVAS,

Petitioner,

v.

M/V OLYMPIC PEGASUS, her engines, boilers, boats, tackle, apparel, machinery, etc., in rem,
and
SOMERSET NAVIGATION CO., in personam,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals For The Fourth Circuit

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The Respondents hereby oppose the issuance of a Writ of Certiorari to review the June 7, 1977, decision and subsequent Order of August 5, 1977, of the United States Court of Appeals for the Fourth Circuit.

QUESTIONS PRESENTED

I. ARE THERE ANY SPECIAL AND IMPORTANT REASONS FOR REVIEWING THE FOURTH CIRCUIT'S AFFIRMATION OF THE DISTRICT COURT'S FINDING THAT RESPONDENTS LACK CONTACTS WITH VIRGINIA SUFFI-

CIENT FOR VALID SERVICE OF PROCESS UNDER TITLE 8 SECTION 60 CODE OF VIRGINIA, 1950, AS AMENDED?

II. EVEN IF SERVICE OF PROCESS WAS VALID UNDER TITLE 8 SECTION 60 CODE OF VIRGINIA, 1950, AS AMENDED, DID THE LOWER COURT ABUSE ITS DISCRETION IN DISMISSING PETITIONER'S CLAIMS FOR LACK OF JURISDICTION NECESSITATING AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION?

STATEMENT OF THE CASE

Grevas, a Greek National, with twenty-seven years experience at sea, signed an Agreement of Enlistment in Piraeus, Greece, on March 3, 1976, to serve on board the M/V OLYMPIC PEGASUS as a boatswain. The following day he joined the vessel in Augusta, Italy. Both the Agreement of Enlistment and the Foreign Articles signed by Grevas specifically incorporated the terms of the Greek Collective Bargaining Agreement. Grevas was a member of the Panhellenic Seamen's Federation which negotiated the terms of the Greek Collective Bargaining Agreement. This Agreement provided that any claims arising out of the plaintiff's employment as a seaman, including those claims arising out of an accident or illness, would be governed by Greek law and would be subject to the exclusive jurisdiction of the Greek Law Courts.

The M/V OLYMPIC PEGASUS was owned by Somerset Navigation Company, Panama S. A., a Panamanian corporation. The vessel was registered in and flew the flag of the Republic of Liberia. The M/V OLYMPIC PEGASUS was the only vessel owned, operated or chartered by Somerset. At all material times the vessel was on a Time Charter to, and thus her movements were under the exclusive control of

Sovfracht, agents for the Union of Soviet Socialist Republics (U. S. S. R.).

None of the officers, directors or stockholders of Somerset were citizens or resident aliens of the United States. Somerset had no registered agent in Virginia.

The voyage in question commenced in Odessa, U. S. S. R., on March 1, 1976, with a destination of Buenos Aires, Argentina. On March 5, 1976, while at sea, the vessel on orders from Sovfracht, was diverted to the East Coast of the United States north of Hatteras. On March 16, 1976, the vessel was instructed by Sovfracht to proceed to Norfolk, Virginia, for loading of cargo.

On March 17, 1976, the plaintiff was injured when burned with acid. At this time the vessel was located at approximately Latitude 36° 51' N, Longitude 61° 49' W or about 650 miles at sea off the East Coast of the United States. At the time of this accident the vessel was encountering gale force winds and rough seas which persisted up until the vessel entered Hampton Roads. The adverse weather and sea conditions prevented the plaintiff's safe evacuation from the vessel either by sea or by air. Upon reaching anchorage on March 20, 1976, in Hampton Roads, the plaintiff was taken to the Norfolk United States Public Health Service Hospital.

Petitioner remained in the hospital until June 13, 1976, and thereafter in accordance with the Greek Collective Bargaining Agreement he was repatriated to his home in Greece where he continued to receive sick wages and medical care.

The vessel remained at anchorage until March 26, 1976, at which time she proceeded to a loading berth. The loading of cargo was completed on March 28th at 1930 hours and the vessel sailed the same day at 2040 hours. This was the only time the vessel had ever been to Virginia.

ARGUMENT

I. THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR REVIEWING THE FOURTH CIRCUIT'S AFFIRMATION OF THE DISTRICT COURT'S FINDING THAT RESPONDENTS LACK CONTACTS WITH VIRGINIA SUFFICIENT FOR VALID SERVICE OF PROCESS UNDER TITLE 8 SECTION 60 CODE OF VIRGINIA, 1950, AS AMENDED.

The stated basis for Petitioner's request for certiorari is that the Fourth Circuit has defined the boundaries of due process inconsistently with the decisions of this Court. The crux of Petitioner's request stems from the Court of Appeals' requirement of fairly substantial contacts between Respondents and the Commonwealth of Virginia under §8-60. The Fourth Circuit's opinion, however, must be examined within the limited context of the facts of the instant case. Nowhere in its decision did the Court of Appeals intimate that it was establishing a rigid all-encompassing rule. There are, therefore, no special and important reasons for reviewing the Fourth Circuit's decision. Rule 19, Supreme Court Rules.

Petitioner mistakenly maintains that the Fourth Circuit's analysis of the instant case is inconsistent with this Court's decision in *Shaffer* v. *Heitner*, _____ U. S. _____, 97 S. Ct. 2569 (1977), and has created a new standard of "fairly substantial contacts" where the cause of action arises outside the forum and plaintiff is not a resident of the forum. Petitioner infers this inconsistency from the *Shaffer* Court's failure to explicitly mention either the situs of the cause of action or plaintiff's residence in concluding that the defendant there lacked sufficient contacts with the forum state.

This semantic inconsistency results, however, not from any doctrinal inconsistency between the Fourth Circuit's decision and *Shaffer*, but rather from Petitioner's own misreading of the *Shaffer* case. Aside from the fact that *Shaffer*

largely concerned the extent of *in rem* jurisdiction, there the Court had no reason to reach the issue of the significance of the situs of the cause of action or of plaintiff's residence, since it ultimately determined that defendant's contacts with the forum were insufficient. *See*, 97 S. Ct. 2581, 2586. Furthermore, in illustrating the factors which Petitioner considers dispositive of the adequacy of Respondents' contacts — the likelihood that evidence will be found in the forum, the interest of the forum in the action, the availability of another forum, and the extent of hardship upon Respondents in defending abroad — the *Shaffer* Court stressed that these illustrations did not include all the variables which might affect a decision and were not necessarily decisive. *Id.* at 2582 n. 28.

Indeed, in characterizing the relationship between the defendant, the forum, and the litigation as of central concern in inquiring into personal jurisdiction, *id.* at 2580, the *Shaffer* Court implicitly underscored the importance of the situs of the cause of action and of plaintiff's residence. This Court has consistently suggested that these factors have an important bearing on the relationship between the forum and the litigation, and that therefore the relationship between the defendant and the forum must be more substantial where the cause of action arises outside the forum and the plaintiff is a non-resident.

This Court has distinguished between cases where plaintiff's cause of action arose in the forum and those where it did not. In the latter cases, the Court has found minimum contacts to be compatible with fair play and substantial justice where the foreign corporation has engaged in continuous and systematic business within the forum state. *International Shoe Co.* v. *State of Washington*, 326 U. S. 310, 66 S. Ct. 154 (1945). Noting that "the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state" is insufficient to subject it to suits or

causes of action unconnected with the forum, *id.* 317, the *International Shoe* Court indicated that jurisdiction could be exercised where the foreign corporation engaged in continuous and systematic business within the state, so that the corporation's activities are "so substantial and of such a nature as to justify personal jurisdiction." *Id.* 318.

Petitioner mistakenly supports his position by references to *McGee* v. *International Life Insurance Co.*, 355 U. S. 220, 78 S. Ct. 199 (1957), *Hanson* v. *Denckla*, 357 U. S. 235, 78 S. Ct. 1228 (1958). Actually, *McGee* supports a substantial contacts requirement not only because the cause of action there had arisen in the forum state, but also because the Court found the very basis for its jurisdiction in a contract "which has substantial connection with that state." 355 U. S. at 223. Indeed, the *McGee* Court stressed that the plaintiff there was a resident of the forum, and that the forum had a manifest interest in providing effective means of redress for its residents. *Id.* at 233. Similarly, emphasizing that in each case defendant must purposefully avail itself of the privilege of conducting activities within the forum state, the *Denckla* Court held that it lacked jurisdiction because, *inter alia*, the contract in question lacked a "substantial connection" with the forum state. 357 U. S. at 253. The *Denckla* Court specifically noted that at the time the plaintiff executed the agreement, she was not domiciled in the forum state and that the forum had manifested no special interest in providing redress for citizens injured by non-residents. *Id.* at 252. The Supreme Court has reiterated the requirement that contacts between a foreign corporation and the forum state be sufficiently substantial where the cause of action arises outside the forum state in numerous cases since *International Shoe*. See, e.g. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U. S. 437, 447, 72 S. Ct. 413, 419 (1952).

Thus, the Fourth Circuit's requirement that contacts between a foreign defendant and the forum be more substantial

when the cause of action arises outside the forum and the plaintiff is not a resident fully comports with *International Shoe* and later cases, including *Shaffer*. Compelling policy considerations support giving weight to the situs of the cause of action and plaintiff's residence in determining the substantiality of contacts required for due process: both factors affect the forum state's interest in adjudicating the controversy, an interest which Petitioner concedes is crucial to due process. *Compare, e.g. McGee*, 355 U. S. at 233 with *Shaffer*, 97 S. Ct. at 2582.

Even if the doctrinal structure established by the Court were limited to the factors listed by Petitioner, review of the Fourth Circuit's decision would be inappropriate in light of the facts of the instant case, since Respondents' *de minimis* contacts with the Commonwealth of Virginia fail to meet any test which the Court might impose. First, most of the witnesses and records related to the Petitioner's claim are in Greece. It is true some of the treating physicians and hospital records are located in Norfolk. However, the Petitioner, the ship's crewmembers, the Petitioner's records of employment, the contracts between Petitioner, Petitioner's Union and Respondents, and the physicians with the most recent knowledge of Petitioner's medical condition are all in Greece. In anticipation of this, the parties have selected Greece as the appropriate forum for hearing all claims related to Petitioner's employment as specifically set forth in Petitioner's Agreement of Enlistment, the Foreign Articles of the vessel, and the Greek Collective Bargaining Agreement. These documents set forth in detail the terms and conditions of Petitioner's employment aboard the M/V OLYMPIC PEGASUS.

Second, Virginia has no interest in adjudicating Petitioner's claim. Petitioner is not a citizen or resident of Virginia, nor is he in danger of becoming a public charge, either in Virginia or in Greece. Petitioner's only contacts with the forum lie in his hospitalization in Virginia. Respondents

had neither control over nor interest in the visit of the OLYMPIC PEGASUS to Norfolk. Respondents had time chartered the vessel to Sovfracht, agents for the Union of Soviet Socialist Republics (U. S. S. R.). The charter vested exclusive control of the vessel, her movements and her activities to the charterer. Under the terms of such a charter Respondents had no interest in the value[1] of the cargo beyond insuring the risk of carrying it. See, Generally, W. Poor, American Law of Charter Parties And Ocean Bills of Lading (5th Ed. 1968) Section 7. The fortuitous visit of the OLYMPIC PEGASUS to Norfolk hardly satisfied the "purposefully avail" standard of *Denckla, supra.* at 253. Even assuming *arguendo* that Respondents had control over or an interest in the vessel's visit to Norfoik, the contacts of the vessel were *de minimis* at best. The OLYMPIC PEGASUS has made only one visit to Virginia; the vessel had never called in Virginia prior to Petitioner's injury and has never returned. The vessel's visit lasted only eight days, six of which were at anchorage. The vessel received only the normal husbanding services which any vessel receives before and after a sea passage. One such visit to a Virginia port by a foreign vessel simply cannot satisfy due process requirements for *in personam* jurisdiction where the cause of action arose outside of Virginia. See. *Pappas* v. *Steamship ARISTIDIS,* 249 F. Supp. 692 (E. D. Va. 1965); *Skarpelis* v. *M/T ARTHUR P,* 302 F. Supp. 147 (E. D. Va. 1969).

Third, Greece, the Petitioner's home, provides a convenient and appropriate forum. By the very terms of Petitioner's Agreement of Enlistment, the vessel's Foreign Articles, and the Greek Collective Bargaining Agreement, the parties have agreed that the courts of Greece should have exclusive jurisdiction over any cause of action arising out of

[1]Despite Petitioner's allegations of the cargo's value in his Petition, such value was not introduced into evidence below and is not in the record on appeal.

Petitioner's employment on the OLYMPIC PEGASUS. See, *M/S BREMEN* v. *Zapata Off-Shore Company,* 407 U. S. 1, 92 S. Ct. 1907 (1972). Despite Petitioner's intimations to the contrary, Petitioner's right to pursue his claims before the courts of Greece remains unimpeded.

Fourth, requiring Respondents to defend in Virginia would impose severe and unanticipated hardships, contrary to the policies underlying *International Shoe.* The vast majority of evidence, witnesses and records in the instant action are in Greece. Moreover, in permitting the OLYMPIC PEGASUS to sail under a time charter and divesting itself of control over the vessel's movements, Respondents relied on the contracts with Petitioner and the provisions therein that the courts in Greece would have jurisdiction of all disputes arising out of Petitioner's employment. To ignore these agreements would not only vitiate the express contractual intentions of the parties, but would also hamper international commerce. See, *M/S BREMEN,* 407 U. S. at 9. Overwhelming policy considerations weigh against subjecting Respondents to litigation in Virginia based on one fortuitious visit by the OLYMPIC PEGASUS to Norfolk. These considerations were noted by this Court in *Lauritzen* v. *Larsen,* 345 U. S. 571, 581-82, 73 S. Ct. 921, 928 (1953):

> "But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea."

Thus, the semantic inconsistency which Petitioner claims to exist between the Fourth Circuit's decision and this Court's case law stems not from any genuine inconsistency but rather from Petitioner's attempt to excise from the basic requirements of "certain minimum contacts" the further

proviso that maintenance of the suit not offend fair play and substantial justice. In keeping with a line of Supreme Court decisions from *International Shoe* to *Shaffer*, the Fourth Circuit correctly took into account the situs of the cause of action outside Virginia and Petitioner's nonresidence in the forum.

Therefore, there are no special and important reasons for examining the Fourth Circuit's due process analysis. But even if Petitioner is correct in contending that the Court of Appeals should have given no weight to the situs of the cause of action or to Petitioner's residence, the particular facts of the present case make review inappropriate, since all four due process criteria adduced by Petitioner militate against adjudication in Virginia. To require a foreign shipowner who lacks even *de minimus* contacts with Virginia to bear the burden of further litigation — especially in light of Petitioner's presence in Greece, the forum agreed to by the parties — would undermine the policies underlying *International Shoe*.

II. EVEN IF SERVICE OF PROCESS WAS VALID UNDER TITLE 8 SECTION 60 CODE OF VIRGINIA, 1950, AS AMENDED, THE COURT OF APPEALS' REFUSAL TO FIND AN ABUSE OF DISCRETION BY THE DISTRICT COURT IN DISMISSING PETITIONER'S CLAIMS FOR LACK OF JURISDICTION DOES NOT CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Jurisdiction over suits between foreign seamen and foreign shipowners is discretionary. *The MAGGIE HAMMOND*, 76 U.S. (9 Wall) 435, 19 L. Ed. 772 (1870); *The BELGENLAND*, 114 U.S. 355, 5 S. Ct. 860 (1885); *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U.S. 515, 50 S. Ct. 400 (1930); *Canada Malting Co.* v. *Patterson Steamships*, 285 U.S. 413, 52 S. Ct. 413 (1932); *Anastasiadis* v. *S.S. LITTLE JOHN*, 346 F. 2d 281 (5th Cir. 1965), cert. den. 384 U.S. 920, 86 S. Ct. 1368 (1966). Once again Petitioner cannot demonstrate that the District Court abused its discretion in refusing to exercise jurisdiction.

In exercising its discretion, the Court is bound by the guidelines established by this Court in *Lauritzen* v. *Larsen*, *supra*, and *Hellenic Lines, Ltd.* v. *Rhoditis*, 398 U.S. 306, 90 S. Ct. 1731 (1970). The present case clearly falls outside the limits imposed by these guidelines:

(1) The alleged wrongful act took place on the high seas, not in the United States or Virginia,

(2) The law of the flag is Liberian, not American;

(3) & (4) The allegiance of both parties is Greek;

(5) The place of the contract of employment is Greece;

(6) A Greek forum is accessible to both parties: Petitioner has been repatriated to his home in Greece and Respondents' principal place of business is outside the United States;

(7) The law of the forum is American;

(8) The shipowner's base of operations is not in the United States; and

(9) The OLYMPIC PEGASUS visited American ports infrequently and Virginia only once.

Weighing all of these factors, the Court of Appeals correctly affirmed the District Court's decision that even if service of process was valid, it should use its discretion to decline jurisdiction.

CONCLUSION

For the foregoing reasons, Petitioner's request for the issuance of a Writ of Certiorari should be denied.

Respectfully submitted,

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